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March 2, 2017

VIA ECF

Mark J. Langer, Esq.
Clerk of Court
U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse
333 Constitution Avenue, NW, Room 5423
Washington, DC 20001

RE: Rhino Northwest, LLC v. National Labor Relations Board; Case No. 16-1089
Oral Argument Scheduled March 13, 2017

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j), Petitioner submits the decision issued on February 3, 2017, in *National Labor Relations Board v. Tito Contractors, Inc.*, 847 F.3d 724, 2017 WL 461110 (D.C. Cir. 2017), which was issued after the completion of briefing in this case.

In *Tito Contractors*, the Court decided an issue directly related to Petitioner's Request for Review in the instant case. The Court remanded *Tito Contractors* to the Board because the Board failed to consider or discuss evidence that detracted from its unit determination. Slip op. at *7. Further, the Board's summary approval of the Regional Director's unit determination, as well as the Director's generalized statements in the Decision and Direction of Election, were held to be insufficient under the circumstances. Slip op. at *8. As described fully in the Petitioner/Cross-Respondent's briefing, similar infirmities afflict the Board's findings of fact in the instant case.

The undersigned certifies that the body of this letter does not exceed 350 words.

Respectfully submitted,

/s/ Heidi K. Durr

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Counsel for Petitioner/Cross-Respondent

cc: All counsel of record (via ECF)